Supreme Court, U. S.
FILED
DEC 20 1980
MICHAEL RODAK, JR., CLERK

Nos. 79-1943 and 80-193

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOSEPH ALESSI, *et al.*,
Appellants,
v.
RAYBESTOS-MANHATTAN, INC., *et al.*,
Appellees.
[No. 79-1943]

HENRY BUCZYNSKI, *et al.*,
Petitioners,
v.
THE GENERAL MOTORS CORPORATION,
Respondent.
[No. 80-193]

On Appeal and Writ of Certiorari from Final Judgment of the United States Court of Appeals for the Third Circuit

BRIEF FOR STATE OF NEW JERSEY

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for State of New Jersey
State House Annex
Trenton, New Jersey 08625

STEPHEN SKILLMAN
Assistant Attorney General
Of Counsel

MICHAEL S. BOKAR
Deputy Attorney General
On the Brief

Adams Press Corp., 5 Commerce Street, Newark, N. J. 07102—(201) 623-8611

Question Presented

Did the Court of Appeals err in holding that the New Jersey law barring offsets of workmen's compensation benefits against retirement pension payments is preempted by the Employee Retirement Income Security Act of 1974?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
STATEMENT OF THE CASE	2
ARGUMENT	5
CONCLUSION	12

Cases Cited

Alabama Power Co. v. Davis, 431 U.S. 581 (1977)	7
Conklin v. Bd. Trustees Police & Fire Ret. Syst., 135 N.J. Super. 131, 342 A.2d 872 (App. Div. 1975)	5
Lally v. Copygraphics, 173 N.J. Super. 162, 413 A.2d 960, 968 (Super. Ct. App. Div. 1980)	6
Leoni v. Tp. of Hamilton, 134 N.J. Super. 231, 339 A.2d 222 (App. Div. 1975)	5
New York Central R. Co. v. White, 243 U.S. 188 (1917)	8, 11
New York Tel. Co. v. New York St. Dept. of Labor, 440 U.S. 519 (1979)	8, 11
San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959)	10
Renshaw v. U.S. Pipe & Foundry Co., 30 N.J. 458, 153 A.2d 673 (N.J. 1959)	7
United States Casualty Co. v. Hercules Powder Co., 4 N.J. 157, 72 A.2d 190 (N.J. 1950)	6

PAGE

United States Codes Cited

29 U.S.C.A.:

Sec. 160(a) 9

Sec. 1053 4

Sec. 1144(a) 4, 7, 11

New Jersey Statutes Cited

N.J.R.S. 1977, ch. 156 ..... 2, 5, 8, 10, 12

N.J.S.A. 34:1A-5.1 6

N.J.S.A. 34:15-12 7

N.J.S.A. 34:15-15 7

N.J.S.A. 34:15-40 6

Nos. 79-1943 and 80-193

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOSEPH ALESSI, *et al.*,

Appellants,

v.

RAYBESTOS-MANHATTAN, INC., *et al.*,

Appellees.

[No. 79-1943]

HENRY BUCZYNSKI, *et al.*,

Petitioners,

v.

THE GENERAL MOTORS CORPORATION,

Respondent.

[No. 80-193]

On Appeal and Writ of Cetriorari from Final Judgment of the United States Court of Appeals for the Third Circuit

---

BRIEF FOR STATE OF NEW JERSEY

Statement of the Case

A. Alessi case.

The plaintiffs-appellants (hereafter plaintiffs) were formerly employed in New Jersey by appellee Raybestos-Manhattan Inc., were granted retirement in 1972 and 1973 and were entitled to retirement pension benefits under the Employee Retirement Plan incorporated in the collective bargaining agreement between their union and Raybestos. In October and November 1977 they obtained judgments against Raybestos in the New Jersey Division of Workers' Compensation awarding them workmen's compensation benefits. The Raybestos pension plan contained a provision requiring the reduction of pension payments by an amount equal to any workmen's compensation or other specified benefits payable for the same months. Pursuant to this offset clause, the plaintiffs' workmen's compensation benefits were offset against their pension benefits.

The plaintiffs filed this action seeking a declaratory judgment holding the offsets invalid under a July 1977 amendment to the New Jersey Workers' Compensation Law, N.J. Rev. Stat. (1977), ch. 156, prohibiting workmen's compensation setoffs against retirement pension benefits. The action was filed in the Superior Court of New Jersey on February 1, 1978 and was removed by Raybestos to the United States District Court for the District of New Jersey on March 3, 1978.

In a letter opinion dated February 15, 1979, the District Court held the offsets invalid under both the 1977 New Jersey law and the nonforfeiture provisions of the Employee Retirement Income Security Act of 1974. Final judgment was entered March 1, 1979 enjoining Raybestos from offsetting the plaintiffs' workmen's compensation pay-

ments against their pension benefits and directing the company to pay them the amounts previously deducted.

Raybestos appealed to the Court of Appeals for the Third Circuit on March 19, 1979. The Court of Appeals entered an order on September 7, 1979 granting the State of New Jersey's motion for leave to intervene as a party. In an opinion filed Febraury 15, 1980, the court held among other things that the 1977 New Jersey offset amendment is preempted by ERISA.*

The plaintiffs filed a notice of appeal with this Court April 25, 1980, and probable jurisdiction was noted November 3, 1980.

B. Buczynski case.

This action was filed August 5, 1977 in the Chancery Division of the New Jersey Superior Court and was removed by respondent General Motors Corporation to the United States District Court for the District of New Jersey by Petition for Removal filed August 9, 1977. The plaintiffs-petitioners had been employed by GM at various plants in New Jersey. Each was granted retirement prior to the July 14, 1977 amendment to the New Jersey Workers' Compensation Law prohibiting the setoff of benefits against nondisability retirement pension benefits. Prior to that date they filed claims for workmen's compensation against GM with the New Jersey Division of Workers' Compensation and obtained judgments awarding benefits.

---

* While the State concurs in the plaintiffs' position respecting the invalidity under ERISA of the Raybestos pension plan offset clause, the only issue with respect to which the State is directly involved is the applicability of ERISA's preemption provision to the 1977 State amendment. This was the only substantive question argued by the State below, and is the only issue addressed in this brief.

The plaintiffs were notified by General Motors in June 1977 of its intent to make certain reductions in their retirement pension benefits in accordance with provisions of the pension plan for hourly-rate employees incorporated in the collective bargaining agreement between GM and the plaintiffs' bargaining representative, Local 736 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. These provisions stated that "unless prohibited by law" the company, with certain exceptions, shall deduct from a retiree's monthly pension benefits an amount equal to any workmen's compensation payments received for that period. The offset provisions appeared in essentially identical form in 1970, 1973 and 1976 versions of the pension plan.

The District Court granted the State of New Jersey's motion to intervene as a party defendant. By order dated August 9, 1978, the court certified the case as a class action on behalf of all retirees entitled to benefits under the General Motors Corporation Hourly Rate Employees Pension Plan payable for months beginning on or after April 1, 1971.

In an opinion dated August 24, 1978, the court invalidated the plan's offset clause as inconsistent with ERISA's nonforfeiture provisions, 29 U.S.C.A. §1053. It further held that even if these offsets were not deemed an unlawful forfeiture under ERISA, they would still be barred under the plan clause allowing such offsets "unless prohibited by law." The 1977 New Jersey amendment, it stated, constitutes just such a valid law barring offsets. The amendment, it concluded, is preempted neither under general preemption principles nor by the specific preemption provision of ERISA, 29 U.S.C.A. §1144(a), which states that the act's provisions, with certain exceptions, "shall supersede any and all State laws insofar as they

may now or hereafter relate to any employee benefit plan. . . ."

General Motors moved for reconsideration of the court's decision, and on December 20, 1978 the District Court filed a supplemental opinion adhering to its original ruling, including the conclusion that the New Jersey offset amendment was not preempted by ERISA.

General Motors appealed on April 12, 1979 to the Court of Appeals for the Third Circuit, which reversed the District Court in its opinion of February 15, 1980.

The plaintiffs filed a petition for writ of certiorari which was granted November 3, 1980.

ARGUMENT

A state is not preempted by ERISA from preserving workmen's compensation benefits awarded to employees by forbidding employers to set off benefits against retirement pension payments by the same employer.

N.J. Rev. State. (1977), ch. 156 provides that "The right of [workmen's] compensation granted by this chapter may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments." The immediate purpose of the 1977 amendment was to resolve the uncertainty created by conflicting decisions of the New Jersey Superior Court on this issue. Compare *Conklin* v. *Bd. Trustees Police & Fire Ret. Syst.*, 135 N.J. Super. 131, 342 A.2d 872 (App. Div. 1975) with *Leoni* v. *Tp. of Hamilton*, 134 N.J. Super. 231, 339 A.2d 222 (App. Div. 1975). A statement appended to an earlier version of the bill enacted as the 1977 amendment set forth its substantive objective:

> "There are certain labor contracts and pension plans that provide for a deduction of workmen's compensation payments from monthly pension benefits. *This practice is contrary to the basic purposes of the Workmen's Compensation Act and should be prohibited by law.* This bill would provide such prohibition." (Emphasis added.)

One of the "basic purposes" of the Workers' Compensation Law* that the New Jersey Legislature might reasonably believe was being undermined by setoffs against retirement pension payments is the policy prohibiting employers from directly or indirectly recouping compensation benefits awarded employees. N.J. Stat. Ann. 34:15-40; *United States Casualty Co.* v. *Hercules Powder Co.*, 4 N.J. 157, 72 A.2d 190 (N.J. 1950). The Legislature might reasonably have concluded also that the prospect of such offsets serves to discourage the filing of compensation claims; an employee who, like the present plaintiffs, happens to sustain a work-related disability at or near the point where he is eligible for a retirement pension might well forbear the pursuit of workmen's compensation benefits that would be set off dollar for dollar against his pension right. *Cf. Lally* v. *Copygraphics*, 173 N.J. Super. 162, 413 A.2d 960, 968 (Super. Ct. App. Div. 1980) ("Employer conduct which undermines employee resort to workers' compensation benefits has been characterized by the leading commentator as a matter of 'opprobrium' and as employer misconduct which is 'particularly repellent' . . . We agree. . . .") By barring workmen's compensation offsets against retirement (as opposed to disability) pension benefits, the 1977 amendment effectively nullified the Supreme Court of New Jersey's

---

* The name of the program was changed in 1975 from workmen's to workers' compensation. N.J. Stat. Ann. 34:1A-5.1.

holding 18 years earlier in *Renshaw* v. *U.S. Pipe & Foundry Co.*, 30 N.J. 458, 153 A.2d 673 (N.J. 1959) that such offset provisions in collectively bargained pension agreements do not offend State public policy.

The issue here is whether the 1977 amendment "relates to" pension plans within the meaning of ERISA's preemption clause, 29 U.S.C.A. §1144(a), and is thus preempted by the federal act. That provision states that the provisions of ERISA ". . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(a) of this title." In considering the preemption issue, the fact that workmen's compensation programs and retirement pension plans serve distinct purposes is highly relevant. Payments under private pension plans of the G.M. and Raybestos type ". . . are predominantly rewards for continuous employment with the same employer." *Alabama Power Co.* v. *Davis*, 431 U.S. 581, 594 (1977). By contrast, as the New Jersey Supreme Court noted in *Renshaw, supra,* the "theory" underlying the New Jersey Workers' Compensation Law is that ". . . liability or its extent *is not based on the impairment or loss of earning power, but rather the loss ensuing from personal injury as it detracts from the former efficiency of the workman's body or its members in the ordinary pursuits of life.*" 153 A.2d at 677 (emphasis added). In addition to awards based on disabilities either partial or total in scope and temporary or permanent in duration, N.J. Stat. Ann. 34:15-12, the New Jersey act requires the employer to pay the necessary and reasonable medical, surgical and hospital costs of an injured worker, N.J. Stat. Ann. 34:15-15.

As made clear in the legislative statement quoted above and noted by the District Court in *Buczynski,* the 1977

amendment ". . . is in no way concerned with pension plans *qua* pension plans. *On the contrary, the New Jersey statute is solely concerned with protecting the employee's right to worker's compensation disability benefits.*" 456 F. Supp. 867, 873 (D. N.J. 1978) (emphasis added). Indeed, the distinction between pension payments and workmen's compensation benefits is explicitly recognized in ERISA itself; section 1003(b)(3) excludes from the act's coverage benefit plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws. . . ." Nor can the important social purposes served by workmen's compensation laws be ignored. As the Court observed in the seminal case upholding the constitutionality of these laws 63 years ago, ". . . laws regulating the responsibility of employers for the injury or death of employees, arising out of the employment, bear so close a relation to the protection of the lives and safety of those concerned that they properly may be regarded as coming within the category of police regulations." *New York Central R. Co.* v. *White,* 243 U.S. 188, 207 (1917). In light of the different purposes served by the State and federal acts, the fact that the New Jersey statute is one of general applicability whose object and concern is not pension plans but preservation of workmen's compensation payments to disabled workers, and the fact that New Jersey, in the words of the District Court in *Alessi,* "has a strong local interest in maintaining a competent worker's compensation program," N.J. Rev. Stat. (1977), ch. 156 is not preempted by ERISA.

The controlling principles are articulated in the plurality opinion for the Court in *New York Tel. Co. of New York St. Dept. of Labor,* 440 U.S. 519 (1979). The issue there was whether a state law authorizing the payment of unemployment compensation benefits to strikers was

preempted by the NLRA by reason of "the possible impact of unemployment compensation on the bargaining process." *Id.* at 544. In addition to the explicit NLRA provision preempting state jurisdiction over unfair labor practices, 29 U.S.C.A. §160(a), the Court noted that it had enunciated a broad NLRA preemption doctrine dictating, for example, that "Congress intended to forbid state regulation of economic warfare between labor and management, even though it was clear that none of the regulated conduct on either side was covered by the federal statute." *Id.* at 530. Despite these expansive labor law preemption principles, and despite its acceptance of the district court's finding that the New York law "has altered the economic balance between labor and management," *id.* at 531-532, the plurality opinion* concluded that the state act was not preempted by the NLRA.

Significantly, the Court in so holding commented on "the importance of the States' interest in fashioning their own unemployment compensation programs and especially their own eligibility criteria." *Id.* at 539. In language equally applicable here, it noted:

> ". . . the case before us today does not involve any attempt by the State to regulate or prohibit private conduct in the labor-management field. *It involves*

---

* Three Justices who concurred in the result joined only that part of the three-Justice plurality opinion which discerned from the legislative history of the NLRA and the Social Security Act an intent to permit state unemployment benefit payments to strikers; the concurring Justices refrained from joining—without explicitly rejecting—the plurality's further conclusion that the New York act would not otherwise be preempted by federal labor policy. Two of the concurring Justices questioned whether the New York law could be sustained under the preemption principles discussed by the plurality, but no Justice intimated any disagreement with the validity of the principles themselves.

> *a state program for the distribution of benefits to certain members of the public.* Although the class benefited is primarily made up of employees in the State and the class providing the benefits is primarily made up of employers in the State, and although some of the members of each class are occasionally engaged in labor disputes, *the general purport of the program is not to regulate the bargaining relationships between the two classes but instead to provide an efficient means of insuring employment security in the State.*" *Id.* at 532-533 (emphasis added).

Rather than intending to regulate conduct within the jurisdiction of the National Labor Relations Board, the Court added, New York—no less than New Jersey through Rev. Stat. (1977), ch. 156—"has sought to administer its unemployment compensation program in a manner that it believes best effectuates the purposes of that scheme." *Id.* at 545-546. For these reasons the New York Act was entitled to "the same deference that we have afforded analogous state laws of general applicability that protect interests 'deeply rooted in local feeling and responsibility.'" *Id.* at 539-540. This meant that "'in the absence of *compelling congressional direction,* we could not infer that Congress had deprived the States of the power to act.'" *Id.* at 540 (quoting *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 244 (1959) (emphasis added)).

The New Jersey amendment barring workmen's compensation offsets against nondisability pension benefits is fully consistent with ERISA. Even if the Court of Appeals were correct in holding that ERISA's nonforfeiture provisions do not themselves bar such offsets, the act certainly cannot be said to explicitly permit or require them; nor does it indicate that a state may not prohibit these offsets where,

as here, the state concludes they undermine the purposes of its workmen's compensation program. The New Jersey amendment is designed, not to regulate pension plans, but to implement the State's workmen's compensation law. Like other laws enacted under the states' police powers, *New York Central R. Co., supra,* the New Jersey act is "deeply rooted in local feeling and responsibility" and thus entitled to "the same deference . . . afforded analogous state laws of general applicability." *New York Tel. Co., supra.* ERISA evidences no "compelling congressional direction" from which it can be concluded that "Congress had deprived the States of the power to act." *Ibid.* It would be ironic indeed if a federal act whose purpose is to protect the legitimate pension rights of employees were construed to preempt a similarly remedial state provision whose sole intent is to preserve the workmen's compensation entitlement of those employed by the same employer.

For these reasons, the New Jersey act prohibiting employers against whom a workmen's compensation judgment has been entered from offsetting such benefits against nondisability pension benefits payable to the same employee does not "relate to" ERISA-regulated pension plans within the intendment of 29 U.S.C.A. §1144(a).

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the Third Circuit should be reversed insofar as it holds N.J. Rev. Stat. (1977), ch. 156 to have been preempted by ERISA.

Respectfully submitted,

JOHN J. DEGNAN
Attorney General of New Jersey
Attorney for the State of New Jersey
By MICHAEL S. BOKAR
Deputy Attorney General

STEPHEN SKILLMAN
Assistant Attorney General
Of Counsel

MICHAEL S. BOKAR
Deputy Attorney General
On the Brief